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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,719	06/19/2002	Takako Fujii	M2096-4	5004
7278	7590	12/13/2004	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			WIEKER, AMANDA FLYNN	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/088,719

Applicant(s)

FUJII ET AL. *CN*

Examiner

Amanda F. Wieker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,7-9,13,14 and 25-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-9,25,27,29-31 and 41 is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☒ Claim(s) 2,13,14,26,28 and 32-40 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 June 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

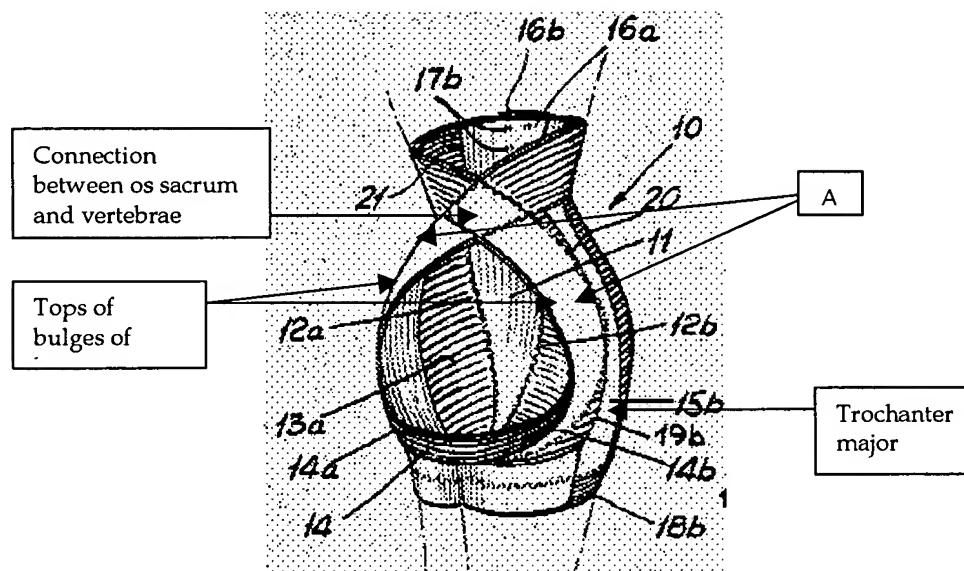
1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Number 3,756,247 to Hand.

Hand discloses a garment (10) comprising a stretch fabric wherein the garment covers at least a part of the lower body of a wearer, has a crotch part, and is worn by being fitted to the wearer's body, wherein: the garment in part has a portion with a strong straining force (14); the portion with a strong straining force is a strong straining portion (A); right and left parts of the portion (A) are connected at a position on the back side of the garment corresponding to any region from os sacrum to vertebrae lumbalis of the wearer's body (see figure below); and the portion (A) covers a region extending from said position through tops of bulges of the buttocks or vicinities thereof approximately in the direction of muscle fibers of musculus gluteus maximus at right and left to at least the vicinity of trochanter major.



### *Response to Arguments*

3. Applicant's arguments, see page 16 of Applicant's remarks, filed 06 October 2004, with respect to claim 2 have been fully considered and are persuasive. The rejection of claim 2 has been withdrawn.
4. Applicant's arguments filed 06 October 2004 have been fully considered but they are not persuasive.

On page 15 of Applicant's remarks, Applicant argues that the Hand apparatus does not disclose a portion with a strong straining force that crosses right over the peaks of the buttocks, (that extends "from said position through tops of bulges of the buttocks or vicinities thereof"), but rather discloses a portion that curves along the perimeter of the buttocks. The examiner disagrees.

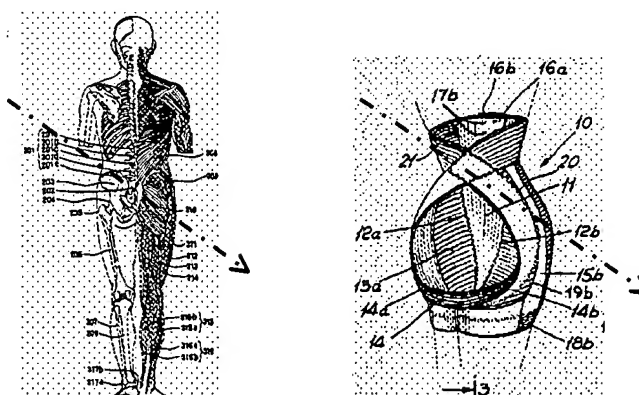
The examiner notes that the claim requires "the first portion covers a region extending from said position through tops of bulges of the buttocks or vicinities thereof approximately in the direction of muscle fibers of musculus gluteus maximus at wearer's right and left to at least

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the vicinity of trochanter major." Pointing to Applicant's own specification (page 16), the phrase "in the vicinity of" means, "positions may deviate more or less from predetermined and specified positions as long as the object of the present invention is achieved." Again, referring to Applicant's specification, the object of the instant invention is to firmly support the gluteus maximus (page 18).

The device disclosed by Hand includes a garment with a portion having a strong straining force. In accordance with Applicant's own definition of the term, the strong straining portion extends at least in the vicinity of the bulges of the buttocks, and the object of the invention is maintained (see Abstract of Hand; the object is to support the buttocks, i.e., gluteus maximus).

Applicant argues that the bands disclosed by Hand "do not cover the buttocks 'in the direction of muscle fibers of musculus gluteus maximus'". The examiner disagrees. Below is a side-by-side comparison of Applicant's own Figure 71, and Figure 1 of Hand. A dashed line is drawn through the gluteus maximus muscle of Figure 71, in the direction of muscle fibers, and through the strong straining portion of Hand. Clearly, the strong straining portion extends at least "approximately in the direction of muscle fibers of musculus gluteus maximus at wearer's right and left to at least the vicinity of trochanter major".



*Allowable Subject Matter*

5. Claims 7-9, 25, 27, 29-31 and 41 are allowed.
6. Claims 2, 13-14, 26, 28 and 32-40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda F. Wiekert whose telephone number is 571-272-4794. The examiner can normally be reached on Monday-Thursday, 8:30 - 6:00 and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Amanda F. Wieker  
Examiner  
Art Unit 3743

afw

  
Henry Bennett  
Supervisory Patent Examiner  
Group 3700